



## COUNCILMEMBER DONNA FRYE

City of San Diego  
Sixth District

### MEMORANDUM

**DATE:** March 20, 2009

**TO:** Council President Ben Hueso

**FROM:** Councilmember Donna Frye

**SUBJECT:** Request to Docket \$103 Million Private Bond Issuance

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On April 1, 2008, the Mayor brought a proposal to the City Council seeking authority to issue approximately \$108 million in bonds for deferred maintenance projects. The bonds were to be issued under a lease-leaseback arrangement and be privately placed because the city could not access the public market. The arrangement included the city leasing to the Public Facilities Financing Authority five city-owned properties - three branch libraries, the police headquarters, and the Rose Canyon operations station.

The item (#331) was continued until April 22, 2008 (see attached for minutes) where the first reading of the ordinance was approved by the majority of the City Council, with my vote in opposition. The motion stated in part “... ***that before projects on the list are changed, they shall come before the council for approval.***” The second reading was May 6, 2008 (Item #51).

At that time, the City Attorney issued a legal opinion stating that the transaction was unconstitutional and the bonds were not issued.

Yesterday, the Mayor held a press conference to announce that the city had gone forward with the bond offering. The councilmembers were not briefed in advance, nor provided with any information until after the transaction was complete.

It is my understanding that projects on the list have been changed since April 22, 2008, and therefore, should have come before the City Council prior to any changes. It also is my understanding that the IBA and her staff have asked for updates and information about the bonds

(most recently at the March 12, 2009, Budget & Finance Committee meeting) and recommended that all councilmembers be briefed in advance of the issuance.

**I am therefore requesting that you docket as soon as possible a public hearing to discuss the following:**

1. Did this most recent process conform with Best Practices (i.e., were any changes made regarding terms or conditions)?
2. Why was no City Attorney opinion provided in advance of this transaction?
3. Why was the decision made to use a private lender, rather than issue a public bond?
4. Why was the City Council not informed and briefed in advance of the bond issuance?
5. What are the financial impacts and for how long does this obligate General Fund revenues?
6. What projects were changed from the original list approved by the City Council last year?
7. When was this last reviewed by the Disclosure Practices Working Group, especially given the time lag from the date of the original approval?
8. Was this discussed at the Audit Committee and were any of the public members informed of this transaction?
9. Is there any further information or questions/issues that should be made public?

Also, copies of any disclosure documents included with this bond issuance and any continuing disclosures should be provided to the City Council.

Thank you for your immediate attention.

CC : Honorable City Councilmembers  
Honorable Mayor Jerry Sanders  
Jan Goldsmith, City Attorney  
Andrea Tevlin, Independent Budget Analyst  
Members of the Audit Committee  
Eduardo Luna, City Auditor  
Macias, Gini & O'Connell, Outside Auditor  
John McNally, Hawkins, Delafield & Wood, Bond Disclosure Council

DF/ks

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:43 p.m. – 4:15 p.m.)

MOTION BY FAULCONER TO ADOPT THE RESOLUTION AS AMENDED TO CORRECT A TYPOGRAPHICAL ERROR IN THE LAST SECTION TO READ, “APRIL 1, 2008 THROUGH MARCH 31, 2013”. Second by Maienschein. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-331: Two actions related to General Fund Deferred Maintenance Capital Improvement Projects Financing. (Citywide.)

(See Reports to the City Council No. 08-042, 08-041, and 08-30; memorandum from Lakshmi Kommi dated 3/17/2008; and PowerPoint regarding Deferred Maintenance Funding Lease Revenue Bonds, Series 2008A.)

(Continued from the meeting of April 1, 2008, Item 334, at the request of Councilmember Atkins, for further review.)

**STAFF’S RECOMMENDATION:**

Introduce the following ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2008-129) INTRODUCED AS AMENDED, TO BE  
ADOPTED TUESDAY, MAY 6, 2008

Introduction of an Ordinance approving the form of and authorizing the execution and delivery of a site lease, a lease, and a purchase agreement and authorizing the execution, delivery and performance of an assignment agreement and an indenture by the Public Facilities Financing Authority of the City of San Diego, and approving and authorizing the issuance and sale of not to exceed \$108,000,000 of the Authority’s Lease Revenue Bonds, Series 2008A (Various Capital Improvement Projects),

approving the form of and authorizing the execution and delivery of a financial advisory services agreement, authorizing the City Attorney to appoint bond counsel, and approving other documents and actions in connection therewith.

Subitem-B: (R-2008-778) ADOPTED AS RESOLUTION R-303622

Declaring the City Council's intention to reimburse expenditures for project costs from proceeds of tax-exempt obligations.

**STAFF SUPPORTING INFORMATION:**

The 2008A Bonds are an interim financing measure to address the funding needs identified for the General Fund deferred maintenance capital improvement projects in Fiscal Years 2008 and 2009. The proposed 2008A Bonds, with a 10-year maturity, will be privately placed with Bank of America, N.A.

The financing plan contemplates refunding the proposed private borrowing in two years (2010) with a 30 year traditional public offering. Therefore, instead of fixing an interest rate for the full 10 year borrowing term which would be higher than for a borrowing term for 2 years, working with the Purchaser, a two-tier pricing (described below) was structured: a lower fixed interest rate (based on a 2-year index plus fixed spread) for the first two year period and if the City is unable to refund the 2008A Bonds by 2010, a higher interest rate (based on an 8-year index plus fixed spread) for years 3-10. Note that under the financing structure, if the City is not able to refund the notes by the two year point, based on the market conditions at that time, and the levels of the 8-year index, the interest rate is fixed for 3-10 year period until the City can refund the Bonds could be a maximum of 12% (the maximum permitted legal rate). Based on current interest rate levels as of March 12, 2008, the interest rate for the 2 year term is 3.46% and the interest rate for the 3-10 year term will be 4.45% (See full staff report for discussion on pricing).

The issuing authority for the 2008A Bonds is the Public Facilities Financing Authority (the "Authority"). Financing documents being authorized for this transaction include - A Site Lease between the City and the Authority; a Lease Agreement between the City and the Authority; an Assignment Agreement between the Authority and the Trustee; an Indenture between the Authority and the Trustee; and a Purchase Agreement between the Purchaser and the Authority. It is anticipated that funding for certain capital expenditures related to the projects may need to be advanced by the City prior to the completion of the proposed financing. In order to reimburse capital expenditures with proceeds from the financing, the City must adopt a reimbursement resolution in accordance with Section 1.150-2 of Treasury Regulations.

The City's Financing Team for the 2008A Bonds consists of staff of the Chief Financial Officer, Debt Management, City Attorney's Office, Comptroller's Office, Treasurer's Office, Risk Management, General Services, and the Real Estate Assets Department. Outside consultants, include Montague DeRose and Associates, LLC ("Montague DeRose") as financial advisor, Hawkins Delafield & Wood LLP ("Hawkins") as the Bond Counsel, White & Case as the Purchaser's Counsel, and Wells Fargo Bank as Trustee.

Should the City Council approve the Ordinance and related financing documents, it is anticipated that the bonds would be priced during the last week of May 2008 with the closing and receipt of funds to occur during the first week of June 2008.

FISCAL CONSIDERATIONS:

Sources and Uses (preliminary and subject to change):

- Estimated Sources  
Par amount of 2008A Bonds \$102,552,000
- Estimated Uses  
Net Proceeds for the project (acquisition fund) \$102,250,000  
Costs of Issuance \$302,000

Based on the principal amount of approximately \$102.6 million, and pricing as of March 12, 2008, the annual interest payment is estimated at approximately \$3.5 million for years 1 and 2. Interest only payments during the first two years will be made on a semi-annual basis on December 1 and June 1. The estimated debt service has been incorporated in the 5-year outlook and will be brought forward for Council authorization during the FY 2009 budget process. If the bonds remain outstanding beyond 2 years, the annual debt service (principal and interest), based on the interest rate as of March 12, 2008, is projected at approximately \$15.5 million, FY 2011-FY 2018.

EQUAL OPPORTUNITY CONTRACTING:

The Funding Agency is the City. Montague DeRose will provide financial advisory services for an amount not to exceed \$42,500 for the proposed 2008A Bonds. Montague DeRose submitted a Work Force Report indicating less than 15 employees and is, therefore, exempt from employment category goals.

Hawkins will provide Bond Counsel services for an amount not to exceed \$75,000 for the proposed 2008A Bonds. Hawkins submitted a Work Force Report, EOC staff has requested, received and approved an EO Plan from Hawkins Delafield and Wood. Staff will continue to monitor the firm's efforts to implement their plans.

PREVIOUS COUNCIL MEETING and/or COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Business entities involved in this transaction are: Bank of America, N.A. (Purchaser); Hawkins Delafield & Wood LLP (Bond Counsel); White & Case, LLP (Purchaser's Counsel); Wells Fargo Bank, National Association (Trustee); and Montague DeRose and Associates LLC., (Financial Advisor).

Kommi/Lewis

Staff: Lakshmi Kommi - (619) 236-6928  
Mark D. Blake – Chief Deputy City Attorney

FILE LOCATION: SUBITEM A: NONE  
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 3:38 p.m.)

MOTION BY MADAFFER TO INTRODUCE THE ORDINANCE IN SUBITEM A AS AMENDED THAT BEFORE PROJECTS ON THE LIST ARE CHANGED, THEY SHALL COME BEFORE COUNCIL FOR APPROVAL WITH A STATUS UPDATE EVERY SIX MONTHS ON THOSE LISTED PROJECTS; AND TO ADOPT THE RESOLUTION IN SUBITEM B. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.